IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.723 OF 2005

Shri Bali Sadu Shelar & ors. Appellants

Vs.

Krishna Dadu Udale & ors. Respondents

Mr.Amit Borkar for appellants.
Mr.G.M.Savagave for respondent nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.
August 09, 2005.

ORAL ORDER:

1. Heard Mr.Borkar, the learned counsel for the appellants-original plaintiffs in R.C.S.No.656 of 2000. The said Suit was decreed by the learned IInd Jt. Civil Judge Junior Division at Kolhapur vide judgment and order dated 14-10-2003 and the decree was challenged in Regular Civil Appeal No.455 of 2003. By the impugned judgment and order dated 11-4-2005 the learned IInd Addl. District Judge at Kolhapur was pleased to allow the appeal and the suit has been remanded back to the trial Court hearing afresh. The plaintiffs have been directed to add all the co-sharers of Revision Survey No.3/2 as necessary parties in the proceeding.

2. The lower Appellate Court has recorded a

finding that both the parties purchased the land without describing the boundaries of the respective shares and the revenue record as well as the Index extracts of the subject transactions indicated that both the parties had purchased the undivided share from their respective predecessors. On the face of these admitted findings the decree passed by the trial Court cannot be executed unless the respective areas of the sale transactions are demarcated by fixing the boundaries of the respective sharers and this could be done only by leading evidence in the suit. The view taken by the lower appellate Court, therefore, does not call for any interference.

3. The appeal is dismissed in limine. The trial of the suit is expedited and the same shall be disposed of by 31st March 2006.

(B.H.MARLAPALLE,J.)